



**CITY OF NEWPORT BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT  
100 CIVIC CENTER DRIVE  
NEWPORT BEACH, CA 92660  
(949) 644- 3221**

## Memorandum

**To:** Planning Commissioners  
**From:** Melinda Whelan, Assistant Planner  
**Date:** April 18, 2013  
**Re:** 441 Old Newport Medical Building (PA2011-056)

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The Planning Commission continued this item to the April 18, 2013 hearing and a public notice was distributed accordingly. New information received since the distribution of the staff report dated April 3, 2013, is the attached correspondence.



# RANEY ZUSMAN MEDICAL GROUP

CARDIOVASCULAR AND THORACIC SURGERY

447 OLD NEWPORT BOULEVARD, SUITE 200  
NEWPORT BEACH, CALIFORNIA 92663

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April 3, 2013

City of Newport Beach  
Planning Commission  
City Council Chambers  
3300 Newport Boulevard  
Newport Beach, CA 92663

RECEIVED BY  
COMMUNITY  
APR 03 2013  
DEVELOPMENT  
CITY OF NEWPORT BEACH

RE: April 3, 2013, Planning Commission Agenda Item #3 – 441 Old Newport Medical Office Building – (PA2011-056) Conditional Use Permit No. UP2011-011

Dear Commissioners:

We respectfully request the denial of the above referenced application for a conditional use permit. The staff report is making a favorable recommendation that the conditional use permit be approved based on temporary solutions to a permanent problem. We are requesting a denial based on the following facts:

1. Page 4 of the staff report discusses the Reciprocal Parking Easement Agreement with the property owner at 445 Old Newport Boulevard. On April 3, 2013 at 2:35pm we spoke with the bankruptcy attorney, Mr. Sheldon Herbert, who confirmed that the property is still in bankruptcy proceedings. While he does believe that the property will be awarded to the original owner the proceeding have not yet been finalized. Furthermore, the original owner, Sid Soffer, passed away in 2007. Therefore, the property would be subject to probate court if in fact it is awarded back to the original owner.
2. Neither the staff report nor the Reciprocal Parking Easement Agreement addresses the dilapidated condition of the "main" structure on the property. The restaurant that existed was closed several years ago and the building has fallen into complete disrepair (see attached photographs). There are feral cats and rodents on the property. The windows to both the restaurant and shed have been broken and were only recently boarded up. The only improvements discussed in the report relate to paving and grading as well as demolition of the storage shed. There is no discussion of main building and the potential safety hazards it poses due to the current condition of the structure.
3. The Reciprocal Parking Easement Agreement discusses the use of the property at 445 Old Newport as though it was a viable, functioning restaurant. In fact, no restaurant exists – just an old broken-down building that requires demolition. If Sid's family were able to take ownership of the property at 445 Old Newport and they were able to open a new restaurant, their hours of

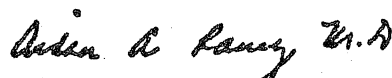
operation would need to be such that they do not interfere with the daytime parking requirements of the property at 441 Old Newport; meaning the restaurant could not open for business until after 6:00p.m. Is the City of Newport Beach going to monitor the parking situation when these hours of operation inevitably conflict?

4. In the staff report, Facts in Support of Finding, #2, one of the required conditions of approval relates to the applicant notifying the City if there are any changes to the off-site parking lot. If these changes occur after the property at 441 Old Newport has long-term lease agreements in place, how will the City enforce the reduction of medical office use in proportion to the lack of parking spaces?
5. If the property at 445 Old Newport is improved, where will all the additional cars park during the construction term?

As owners of the property at 447 Old Newport Boulevard, we are very concerned that our parking lot will be negatively impacted if this permit is approved. We are requesting that the applicant be held to the same requirements for parking as the other operating businesses in the area. Granting approval of the applicant's request for this conditional use permit would provide a temporary solution favoring the property at 441 Old Newport Boulevard while creating a permanent problem for the surrounding property owners that have complied with the parking requirements the City of Newport Beach. We urge you to reconsider the staff recommendation and require 441 Old Newport to remain commercial, not medical or find a parking solution that is permanent and without conditions.

Thank you for your time.

Sincerely,

  
Aidan A. Raney, M.D.

  
Ann G. Raney



# MAIN RESTAURANT STRUCTURE

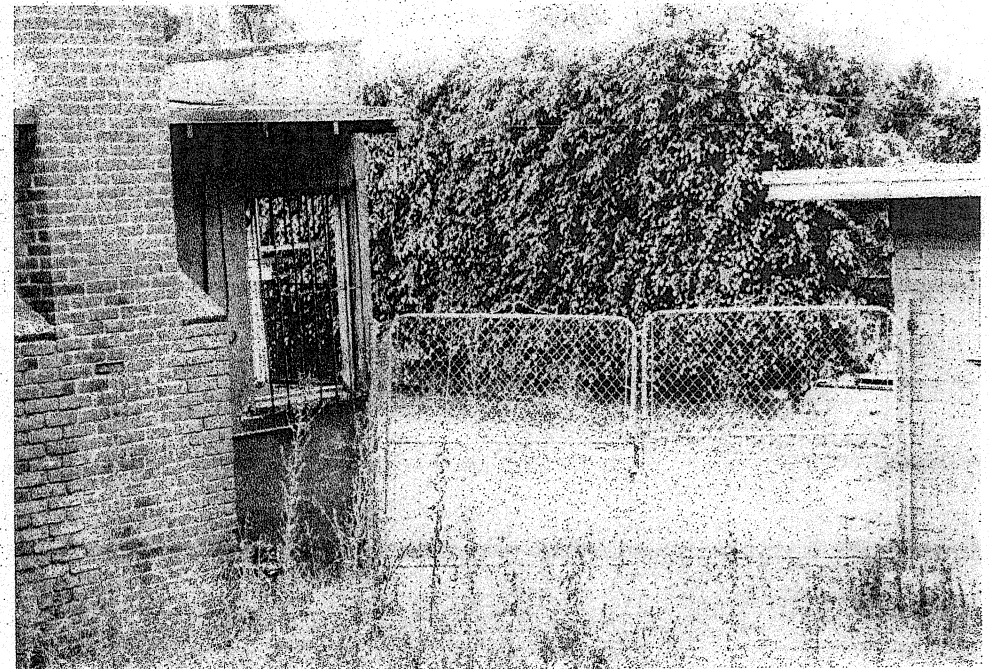
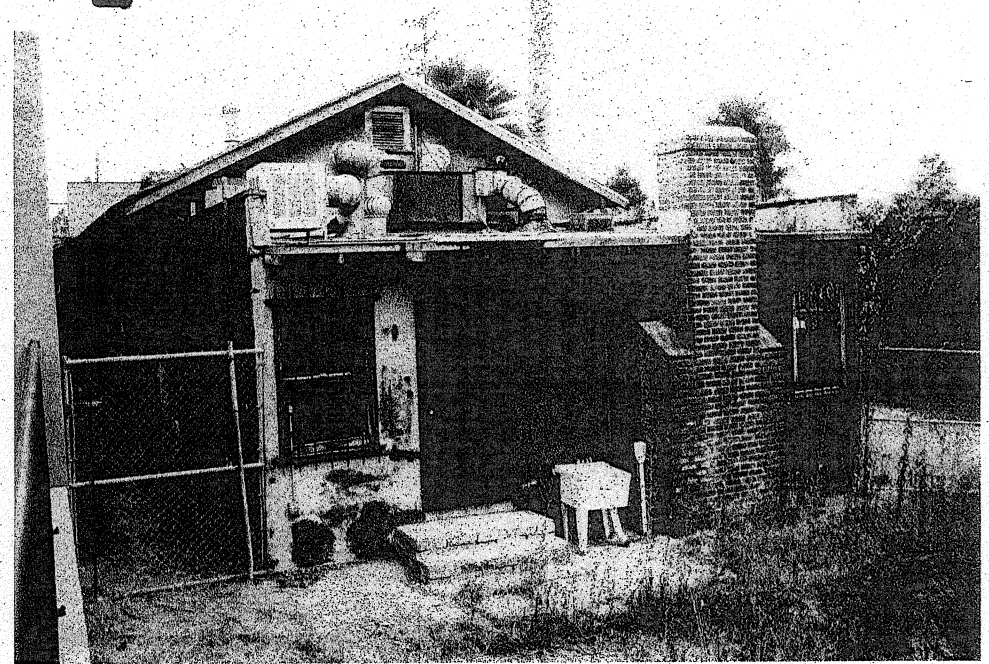
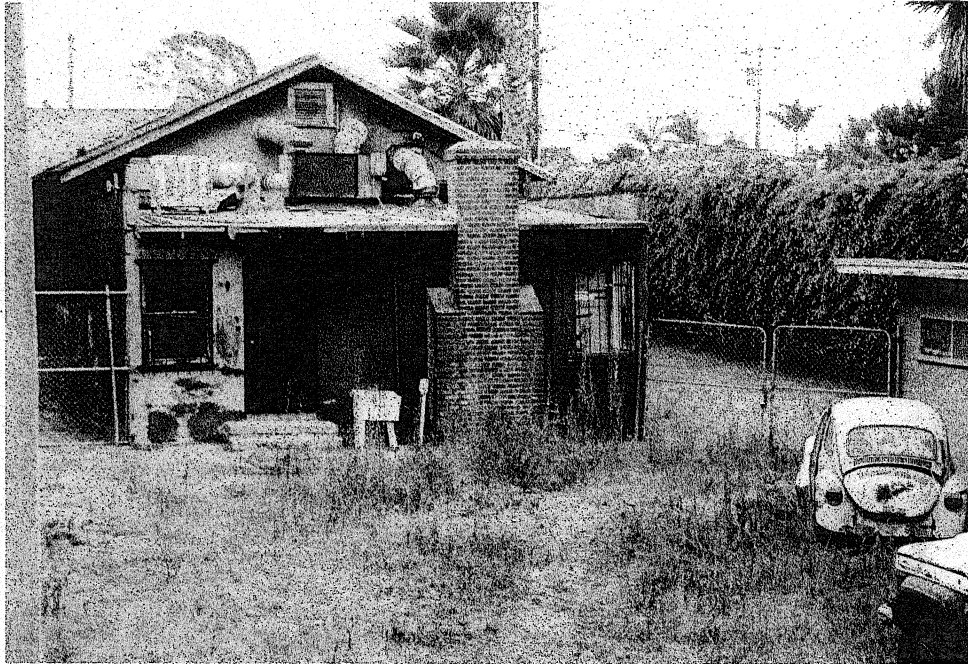
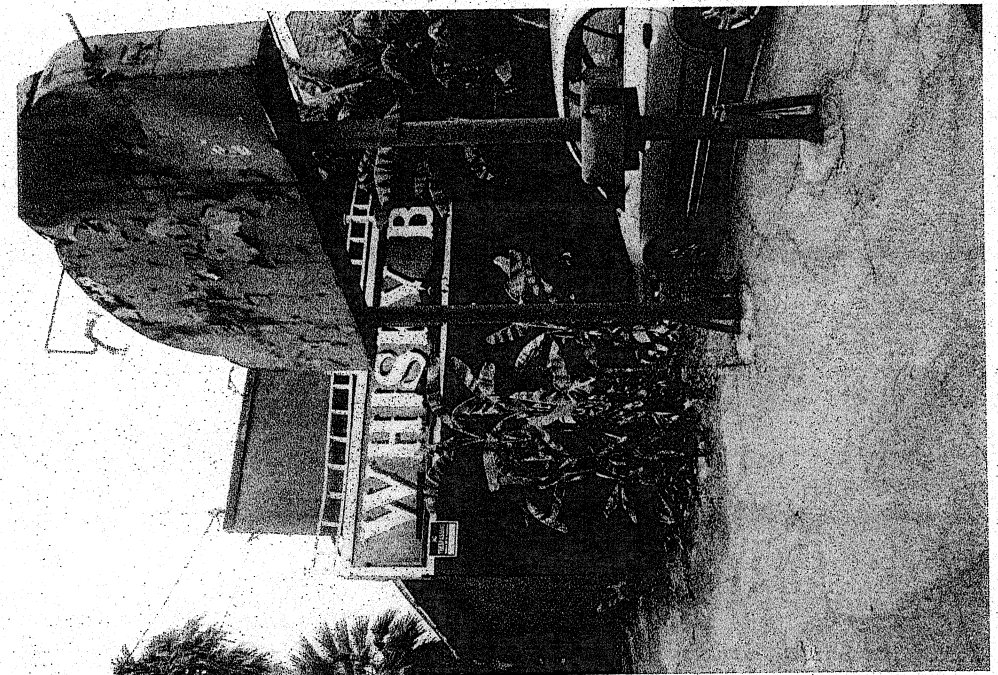
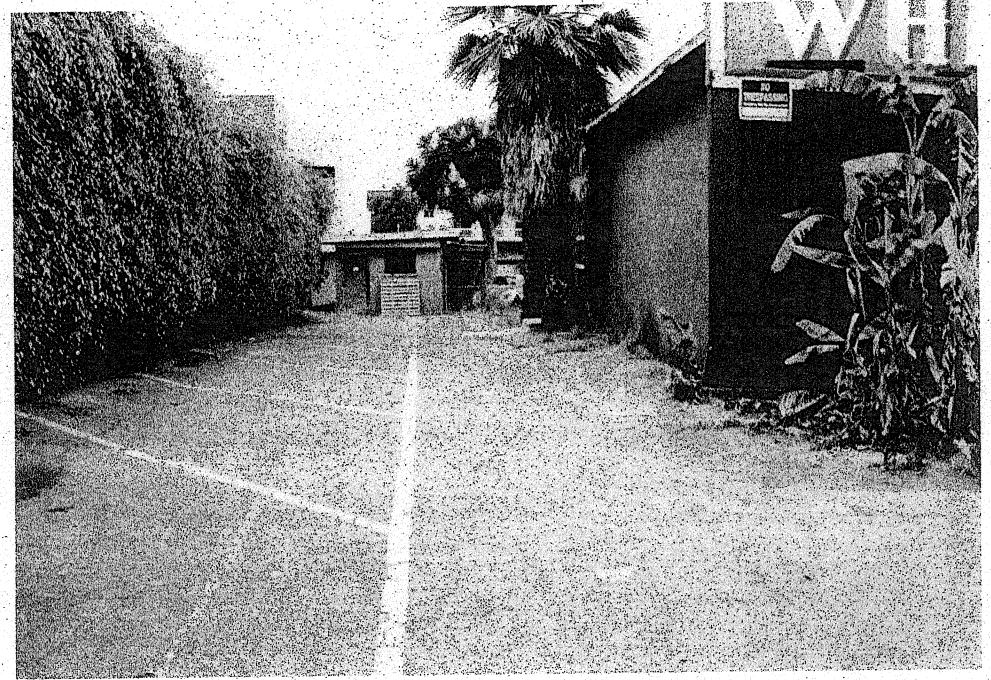




EXHIBIT "B"

445 OLD WILFOLD



**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

April 3, 2013  
Agenda Item No. 3

**SUBJECT:** 441 Old Newport Medical Office Building - (PA2011-056)  
▪ Conditional Use Permit No. UP2011-011

**APPLICANT:** John Bral

**PLANNER:** Melinda Whelan, Assistant Planner  
(949) 644-3221, [mwhelan@newportbeachca.gov](mailto:mwhelan@newportbeachca.gov)

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**PROJECT SUMMARY**

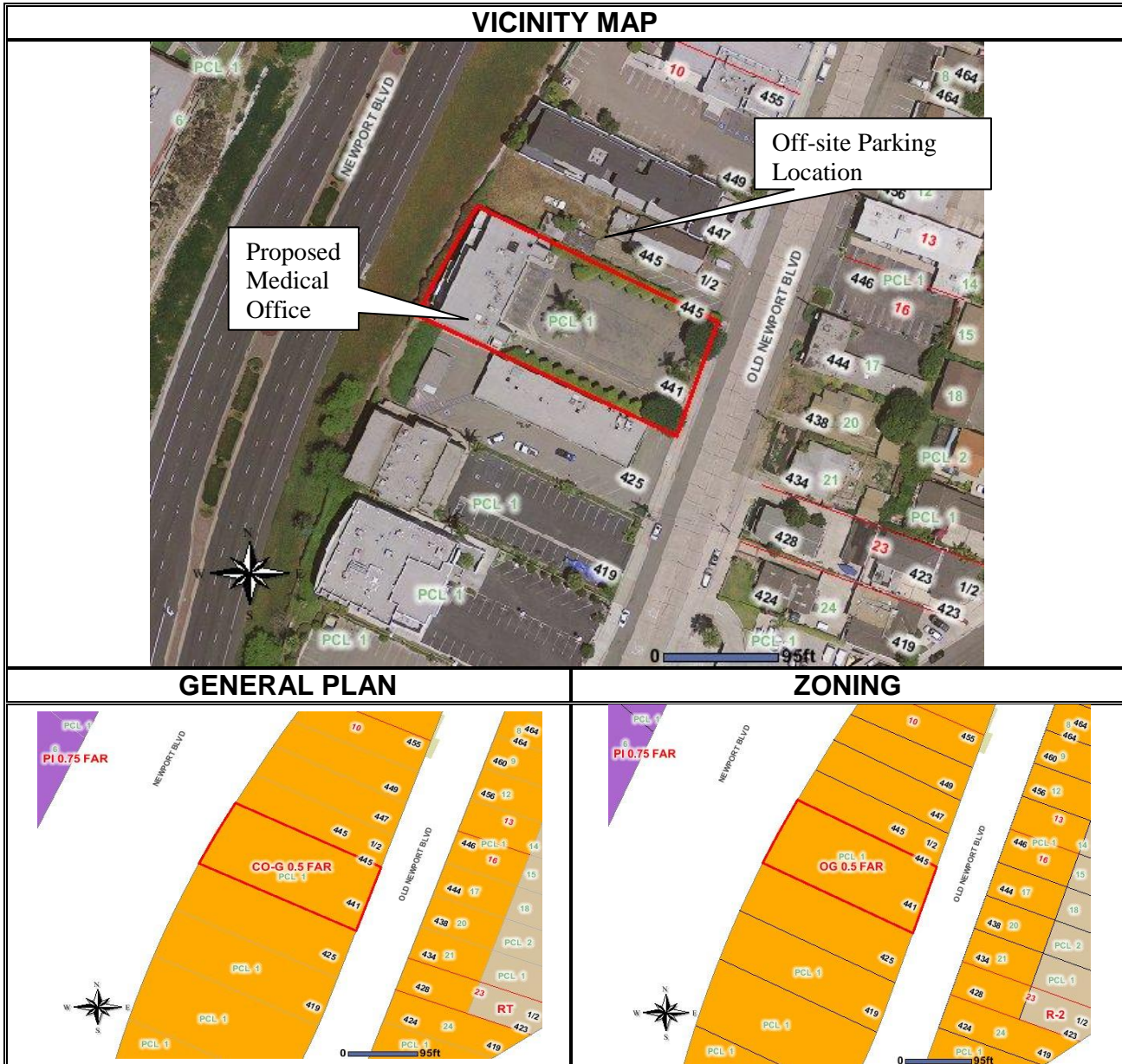
The applicant requests approval of a Conditional Use Permit to allow off-site parking. The applicant has secured the ability to improve the adjacent property at 445 Old Newport Boulevard to accommodate a total of 13 parking spaces during the day. Combined, the proposed on-site and off-site parking spaces will provide the minimum parking spaces required by the Zoning Code for medical uses.

**RECOMMENDATION**

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. \_\_\_\_ Approving Conditional Use Permit No. UP2011-011 (Attachment No. PC 1).







LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	General Commercial Office (CO-G)	Office General (OG)	Vacant General Office
NORTH	CO-G	OG	Vacant Restaurant
SOUTH	CO-G	OG	Existing Office
EAST	CO-G	OG	Existing Residential
WEST	N/A	N/A	Overlooks Newport Blvd.

## **INTRODUCTION**

### **Project Setting**

The subject commercial property is located north of Hospital Road on Old Newport Boulevard. The site is approximately 23,080 square feet and is developed with a 11,540-square-foot building formerly occupied by general office uses and is currently being renovated. The rear of the property overlooks Newport Boulevard. The property to the north is developed with a vacant restaurant and accessory building. The property to the south is developed with a commercial office building and a freestanding commercial retail building. Directly across Old Newport Boulevard, to the east, is a mix of homes on commercially zoned lots and general commercial and office buildings.

### **Background**

#### *Planning Commission*

On September 6, 2012, the Planning Commission considered the request for Conditional Use Permit No. UP2011-011, to waive 5 off-street parking spaces and to allow 7 spaces to be located on the adjacent property at 445 Old Newport Boulevard (vacant restaurant). Approval would have allowed the building to be converted to medical office. A parking management plan that included a valet parking service was also proposed.

The Commission was concerned with the documentation claiming less parking demand would be generated by the proposed medical office and with the proposed off-site parking location. At the time the property at 445 Old Newport Boulevard was in bankruptcy court and its deteriorated physical condition compromised access to the parking. The Planning Commission also questioned the validity of the off-site agreement. As a result, the Commission was unable to make the required findings and denied the Conditional Use Permit request. The Resolution of Denial, found in Attachment No. PC 2, includes findings for denial made by the Commission.

On September 19, 2012, the applicant appealed the Planning Commission's denial of Conditional Use Permit No. UP2011-011.

#### *City Council*

Subsequent to filing the appeal, the applicant modified the project, eliminating the need for a parking waiver. At the March 26, 2013, the City Council determined that the project revisions were significant and directed staff to take the project back to the Planning Commission for review and action.

## **DISCUSSION**

### Analysis

#### *General Plan*

The property is designated with a General Plan land use of General Commercial Office (CO-G) which is intended to provide for administrative, professional, and medical offices with limited accessory and retail uses. The proposed medical office use is consistent with the intent and goals of this designation.

#### *Zoning Code*

The property has a Zoning designation of Office General (OG) 0.5 FAR (floor area ratio) which is intended to provide areas for administrative, professional, and medical offices with limited retail uses. Medical office uses are permitted by-right in this zoning district. With the exception of the required off-street parking, the development complies with the floor area ratio height, setbacks, and other standards of the Zoning Code.

#### *Off-site Parking*

A private Reciprocal Parking Easement Agreement (Attachment No. PC 3) authorizes the subject use to utilize 445 Old Newport Boulevard, the abutting property to the north, for parking. Essentially the Agreement allows the office site to use the restaurant site for parking during the day and the restaurant site to use the office site for parking in the evening. The Agreement runs with the property and is binding upon change in ownership. So that the City can monitor the availability off-site parking, Condition of approval No. 6 requires the applicant to notify the City of a change of ownership, use or access to the parcel where the off-site spaces are located, or of any termination or default of the Agreement between the parties. Condition of approval No. 7 states that if the agreement is terminated, substitute on- or off-site parking must be provided pursuant to review by the Community Development Director or there must be a reduction in the medical office use in proportion to the parking spaces lost. If the off-site parking is lost then the applicant would have the following options: limit the medical office use to 20 percent of the gross square footage of the office building leaving the remainder of the office building to be used by general office or a use with an equal or lesser parking demand, build a parking structure or underground parking on-site, or find another off-site parking location.

Although the 445 Old Newport Boulevard property is in the Bankruptcy court proceedings, recent updates from the bankruptcy lawyers indicate that the property will be awarded to the original owner. The original owner of 445 Old Newport Boulevard is aware and in agreement with the proposed project and has signed the application. Through the Reciprocal Parking Easement Agreement, the owner of 441 Old Newport Boulevard (proposed medical office building) has the right to improve the abutting property at 445 Old Newport Boulevard with a parking lot that provides a minimum 13

spaces. The improvements include grading, paving and the demolition of a storage shed to provide a renovated and expanded parking lot that will meet current City-approved standards. A pedestrian and disabled accessibility path of travel is provided between the abutting properties which has been reviewed by the City Traffic Engineer and the Building Division, and a final approval will be required prior to permit issuance. Condition of approval No. 8 states that improvements at 445 Old Newport Boulevard shall be completed prior to medical office uses occupying the building at 441 Old Newport Boulevard.

### Findings for Approval

#### *Off-site Parking Findings for Approval*

Pursuant to Section 20.40.100 B., to approve off-site parking, the Planning Commission shall make the following findings in addition to those required for the approval of a conditional use permit (see following section for conditional use permit findings):

1. The parking facility is located within a convenient distance to the use it is intended to serve;
2. On-street parking is not being counted towards meeting parking requirements;
3. Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area; and
4. The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.

The off-site parking located at 445 Old Newport Boulevard is abutting the subject property to the north. The use of on-street parking for the proposed medical use is not proposed. Due to the proximity to the off-site parking, the creation of traffic hazards or negative impacts is not anticipated. The existing Reciprocal Parking Easement Agreement (Attachment No. PC 3) calls for the restaurant site (445 Old Newport Boulevard) to have parking available for the subject office use (441 Old Newport Boulevard) during the office business hours and for the office site to have parking available for the restaurant use during restaurant hours. Upon termination of the agreement the size or capacity of the medical use shall be reduced in proportion to the parking spaces lost or other parking spaces must be secured.

#### *Conditional Use Permit Findings for Approval*

Pursuant to Section 20.40.100 A., the Planning Commission may approve or conditionally approve a conditional use permit for these types of parking requests only after first finding all of the following per Section 20.52.20 (Conditional Use Permits):

1. The use is consistent with the General Plan and any applicable specific plan;



2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;
3. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;
4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and
5. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Due to the proximity to Hoag Hospital, medical office buildings are common along Old Newport Boulevard. Medical offices are consistent with the CO-G General Plan land use designation and are allowed by-right within the OG zoning district. The proposed off-site parking is in a convenient location and permanently available as required by Code. Vehicle circulation has been reviewed by the City Traffic Engineer and a final parking plan is required to be approved prior to permit issuance for the medical office and the off-site parking lot improvements.

### Summary

With the availability of off-site parking spaces, and compliance with the conditions placed upon the use of the site the proposed off-site parking provides sufficient and reliable parking to meet the minimum code requirements for the proposed medical office use. After a thorough review of the proposal and issues, staff believes the findings can be made and a draft resolution for approval is provided as Attachment No. PC 1.

### Alternatives

If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission should deny the application and adopt the draft resolution for denial (Attachment No. PC 4). Denial would require the property owner at 441 Old Newport Boulevard to maintain the building with a general commercial office use or a use that would require a 1 space per 250 square feet or less parking demand.

### Environmental Review

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines, Class 1 (Existing Facilities). The medical

use would occupy an existing general office building and utilize existing parking lots that are being renovated with no or negligible expansion of use.

Public Notice

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

Submitted by:



Melinda Whelan  
Assistant Planner



Brenda Wisneski, AICP, Deputy Director

**ATTACHMENTS**

- PC 1 Draft Resolution with Findings and Conditions
- PC 2 Planning Commission Resolution of Denial September 6, 2012
- PC 3 Reciprocal Parking Easement Agreement
- PC 4 Draft Resolution for Denial
- PC 5 Project Plans

# **Attachment No. PC 1**

Draft Resolution with Findings and  
Conditions



## **RESOLUTION NO. 2013-**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. 2011-011 TO UTILIZE AN OFF-SITE PARKING LOT AT 445 OLD NEWPORT BOULEVARD FOR AN EXISTING COMMERCIAL OFFICE BUILDING LOCATED AT 441 OLD NEWPORT BOULEVARD (PA2011-056)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### **SECTION 1. STATEMENT OF FACTS.**

1. An application was filed by John Bral, with respect to property located at 441 Old Newport Boulevard, and legally described as Parcel 1 of Parcel Map No. 80-719, in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 163, Pages 31 and 32 of Parcel Maps in the office of the Orange County Recorder requesting approval of a conditional use permit.
2. The subject property is located within the Office General (OG) Zoning District and the General Plan Land Use Element category is General Commercial Office (CO-G).
3. The subject property is not located within the coastal zone.
4. The applicant proposed a conditional use permit to reduce the required off-street parking and to utilize an off-site parking lot. The project proposes to utilize the recently renovated commercial office building (11,540 square feet) for medical office and to provide 51 of the 56 required parking spaces (a reduction of five required spaces). Forty-four spaces would be on-site and seven spaces would be provided on the abutting property to the north at 445 Old Newport Boulevard which is developed with a vacant restaurant.
5. A public hearing was held on September 6, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.
6. At the September 6, 2012, meeting the Planning Commission denied the application request pursuant to Resolution No. 1892.
7. On September 19, 2012, the applicant appealed the Planning Commission's decision to deny the entitlement request to allow a reduction in the required off-street parking and to utilize an off-site parking lot for a recently renovated commercial office building that proposed a medical office use. Subsequent to the Planning Commission's action on the project, the applicant modified the project by securing the ability to renovate an off-site lot and provide the Code required parking. Therefore, the request changed to a conditional

use permit for off-site parking rather than a conditional use permit for a parking waiver and off-site parking.

8. A public hearing was held on March 26, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the City Council at this meeting.
9. At the March 26, 2013, hearing, the City Council directed the Planning Commission to review and take action on the revised project.
10. A public hearing was held on April 3, 2013, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). The medical use would occupy an existing general office building and utilize existing parking lots that are being renovated with a negligible expansion of use.

## SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.40.100 B. (Off-Site Parking) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for off-site parking are set forth:

### Finding

- A. *The parking facility is located within a convenient distance to the use it is intended to serve.*

### Facts in Support of Finding

1. The off-site parking spaces will be located on the property immediately to the north, abutting the subject property.

### Finding

- B. *On-street parking is not being counted towards meeting parking requirements;*

Facts in Support of Finding

1. None of the spaces counted to provide the minimum required parking for the medical use are on-street.

Finding

- C. *Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area;*

Facts in Support of Finding

1. The off-site parking is directly abutting the proposed medical office lot to the north. The circulation of the on-site and off-site parking has been reviewed by the City Traffic Engineer. A pedestrian and disabled accessibility path of travel is provided between the abutting properties which has been reviewed by the City Traffic Engineer and the Building Division, and a final approval will be required prior to permit issuance.
2. The proposed medical use and off-site parking lot requires approval by the City Traffic Engineer prior to permit issuance and any future changes will require additional review and approval by the City Traffic Engineer.

Finding

- D. *The parking facility will be permanently available, marked, and maintained for the use it is intended to serve;*

Facts in Support of Finding

1. There is a recorded Reciprocal Parking Easement Agreement between the subject property and 445 Old Newport Boulevard. This agreement allows reciprocal parking for the medical office use and for the restaurant use, with the office using the parking on the restaurant site during the daytime when the restaurant is closed and the restaurant using the office site at night when the medical office is closed. The restaurant is currently vacant.
2. A condition of approval requires that the applicant notify the City of any changes to the off-site parking lot such as the re-opening of the restaurant or the implementation of a use with the same hours as the medical office, or a termination or default of the existing Reciprocal Parking Easement Agreement. Upon such notification, the Community Development Director can determine if an alternative location for off-site parking spaces is needed or a reduction of the medical office use in proportion to the parking spaces lost is required.

Pursuant to Section 20.40.100 A., the Planning Commission may approve or conditionally approve a conditional use permit for these types of parking requests only after first finding all of the following per Section 20.52.20 (Conditional Use Permits):

Finding

*E. The use is consistent with the General Plan and any applicable specific plan;*

Facts in Support of Finding

1. The property is designated with a General Plan land use of General Commercial Office (CO-G) which is intended to provide for administrative, professional, and medical offices with limited accessory and retail uses. The proposed medical office use is consistent with the intent and goals of this designation.

Finding

*F. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding

1. The property has a Zoning designation of Office General (OG) which is intended to provide areas for administrative, professional, and medical offices with limited retail uses. The proposed medical office use is consistent with the intent of this designation.

Finding

*G. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*

Facts in Support of Finding

1. Old Newport Boulevard is developed with a mix of business, medical offices, and other similar uses.
2. The proposed vehicle circulation of the on-site lot and off-site parking lot at 445 Old Newport Boulevard have been reviewed and approved by the City Traffic Engineer.
3. The access to the site and the off-site parking is from Old Newport Boulevard and has been determined to be adequate for the use and is compatible with the other commercial lots in the area.

Finding

*H. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*



Facts in Support of Finding

1. The on-site parking lot and the proposed 445 Old Newport Boulevard parking lot have been reviewed for adequate access and circulation for use by employees, patrons and access by emergency vehicles.
2. Aisle widths and parking sizes have been reviewed for proper circulation by the City Traffic Engineer and a final review and approval is required prior to permit issuance for the medical use and the off-site parking lot.
3. Conditions of approval have been included with this resolution to ensure fire services and utilities are protected in place.

Finding

- 1. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

1. The circulation of the final parking layout on both sites will be approved by the City Traffic Engineer prior to permit issuance for the medical use and the parking lot.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby approves Conditional Use Permit Application No. UP2011-011, subject to the conditions set forth in the draft resolution, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 3<sup>rd</sup> DAY OF April, 2013.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Michael Toerge, Chairman

BY: \_\_\_\_\_  
Fred Ameri, Secretary

**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

**PLANNING**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. The development shall be in substantial conformance with the approved site plan stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval).
3. This Conditional Use Permit may be modified or revoked by the City Council or the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare, or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
4. The applicant is required to obtain all applicable permits from the City Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
5. Trash pick-up for 441 Old Newport Boulevard shall be scheduled outside of normal business hours because a required parking space blocks access to the trash enclosure.
6. The Community Development Director shall be immediately notified of any change of ownership, use or access to the property where the off-site spaces are located (455 Old Newport Boulevard), or of any termination or default of the existing Reciprocal Easement Parking Agreement between the parties.
7. Upon notification that the agreement for the required off-site parking has terminated or access to those spaces is no longer available, the Director shall establish a reasonable time in which one of the following shall occur:
  - a. Substitute parking is provided that is acceptable to the Community Development Director; or
  - b. The size or capacity of the medical office use is reduced in proportion to the parking spaces lost.
8. Occupancy of the medical office building is not permitted until the off-site parking lot at 445 Old Newport Boulevard has received all of the required permits and has been improved to accommodate no less than 13 parking spaces as determined by the Public Works.

9. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
10. Use Permit No. 2011-0111 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.60 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
11. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
12. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the (Old Newport Medical Office Building) project including, but not limited to, (Use Permit No. 2011-011) and the determination that the project is exempt under the requirements of the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
13. New signs or changes to existing signs shall comply with sign regulations required in Zoning Code Section 20.42 (Sign Standards), as well as City Standard 110-L to ensure adequate site distance.

#### PUBLIC WORKS/UTILITIES

14. All improvements shall be constructed as required by Ordinance and the Public Works Department.
15. Reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels and curb and gutter along the Old Newport Boulevard frontage.
16. All existing drainage facilities in the public right-of-way, including the existing curb drains along Old Newport Boulevard frontage shall be retrofitted to comply with the City's on-site non-storm runoff retention requirements.
17. An encroachment permit is required for all work activities within the public right-of-way.

18. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
19. All on-site drainage shall comply with the latest City Water Quality requirements.
20. Parking spaces and drive aisles shall be per City Standards STD-805-L-A and STD-805-L-B.
21. The existing private trees along the Old Newport Boulevard frontage on 441 Old Newport Boulevard are overgrown into power lines and adjacent property. These trees shall be trimmed back behind the property line at all times or removed.
22. The hedge along the North property line of 441 Old Newport Boulevard is encroaching into the Old Newport Boulevard public right-of-way/sidewalk. This hedge shall be trimmed back behind the property line at all times.
23. The applicant is responsible for all upgrades to the City's utilities as required to fulfill the project's demand, if applicable.
24. New and existing fire services shall be protected by a City-approved double-check detector assembly and installed per STD-517-L.
25. New and existing commercial domestic water and landscaping meter(s) shall be protected by a City-approved reduced pressure backflow assembly and installed per STD-520-L-A.
26. Install new curb, gutter, sidewalk and driveway along 445 Old Newport Boulevard frontage.
27. All traffic signage shall comply with the current California Manual of Uniform Traffic Control Devices. All traffic striping shall comply with the current Caltrans standard plans.
28. Parking layout and circulation at 441 and 445 Old Newport Boulevard is subject to approval by the City Traffic Engineer prior to permit issuance for the medical use and parking lot.



## **Attachment No. PC 2**

Planning Commission Resolution of Denial  
September 6, 2012





## RESOLUTION NO. 1892

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH DENYING CONDITIONAL USE PERMIT NO. UP2011-011 FOR A REDUCTION OF THE OFF-STREET PARKING REQUIREMENT UTILIZATION OF AN OFF-SITE PARKING LOT FOR AN EXISTING COMMERCIAL OFFICE BUILDING LOCATED AT 441 OLD NEWPORT BOULEVARD (PA2011-056)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by John Bral, with respect to property located at 441 Old Newport Boulevard, and legally described as Parcel 1 of Parcel Map No. 80-719, in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 163, Pages 31 and 32 of Parcel Maps in the office of the Orange County Recorder requesting approval of a conditional use permit.
2. The applicant proposes a conditional use permit to reduce the required off-street parking and to utilize an off-site parking lot. The project proposes to utilize the recently renovated commercial office building (11,540 square feet) for medical office and to provide 51 of the 56 required parking spaces (a reduction of 5 required spaces). Forty-four spaces would be on-site and seven spaces would be provided on the abutting property to the north at 445 Old Newport Boulevard which is developed with a vacant restaurant.
3. The subject property is located within the Office General (OG) Zoning District and the General Plan Land Use Element category is General Commercial Office (CO-G).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on September 6, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

### SECTION 3. REQUIRED FINDINGS.

Pursuant to Section 20.40.100 (Off-Site Parking) and 20.40.110 (Adjustments to Off-Street Parking Requirements), the Planning Commission may approve or conditionally approve a conditional use permit for an off-site parking facility and an adjustment to off-street parking requirements subject to certain findings and conditions per Section 20.52.20 (Conditional Use Permits), Section 20.40.100(B) (Off-Site Parking) and Section 20.40.110 (B) (Adjustments to Off-Street Parking). In this case, the Planning Commission was unable to make the required findings based on the following facts:

1. The applicant did not provide any data such as a parking study and a parking management plan to indicate that the parking demand will be less than the required number of spaces or that other parking is currently suitable and realistically available for use.
2. The physical condition of the proposed off-site parking location precludes its availability for parking because the property is dilapidated with vacated buildings, ungraded areas, and overgrown landscaping.
3. The applicant provided a copy of a Reciprocal Easement Parking Agreement to establish the rights to use 445 Old Newport Boulevard for off-site parking. There are inconsistencies within the Reciprocal Easement Parking Agreement such as the location and the number of parking spaces. In addition, the Reciprocal Easement Parking Agreement does not establish that the off-site parking will be available permanently. Monitoring the use and requiring a reduction in the use should the parking become unavailable in the future is unrealistic and difficult to maintain.
4. The existing commercial office is already deficient in providing the required off-street parking for a general office use.

### SECTION 4. DECISION.

#### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby denies Use Permit No. UP2011-011.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.


**PASSED, APPROVED AND ADOPTED THIS 6<sup>th</sup> DAY OF SEPTEMBER, 2012.**

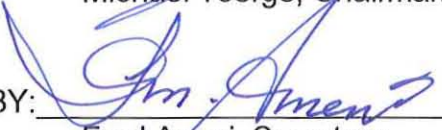
AYES: Ameri, Brown, Hillgren, Kramer, Myers, Toerge, and Tucker

NOES: None

ABSTAIN: None

ABSENT: None

BY:   
Michael Toerge, Chairman

BY:   
Fred Ameri, Secretary



# **Attachment No. PC 3**

Reciprocal Easement Parking Agreement



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO AND  
MAIL TAX STATEMENTS TO:

Ocean View Medical Investors LLC  
825 S. Barrington Avenue  
Los Angeles, California 90049  
c/o Venture RE Group  
2601 Main Street, Suite 560  
Irvine, CA 92614  
Attn: John Bial

Recorded in Official Records, Orange County  
Tom Daly, Clerk-Recorder



39.00

2007000571284 11:52am 09/19/07

117 92 E02 12

0.00 0.00 0.00 0.00 33.00 0.00 0.00 0.00

Accom- /

Space above line for Recorder's use only

APN NOS. 425-271-12 and 425-271-17

This document is being recorded as an  
accommodation only and no liability is  
assumed by Investors Title Company  
as to the validity and effect of this  
document.

**RECIPROCAL EASEMENT AGREEMENT  
(PARKING)  
AND RIGHT OF FIRST REFUSAL**

THIS RECIPROCAL EASEMENT AGREEMENT AND RIGHT OF FIRST REFUSAL entered into this first (1<sup>st</sup>) day of July, 2005, by and between Ocean View Medical Investors LLC, a California limited liability company ("Ocean View") and Sidney Soffer, an individual ("Soffer"). The intent of the parties is to create a reciprocal easement for the benefit of both parties.

**EXPLANATION OF THE INTENT OF THIS RECIPROCAL AGREEMENT**

In order for Ocean View to enjoy full use of its property, it is necessary to convert the present "office" spaces to "Medical Offices". Because of the Newport Beach Code Requirements pertaining to parking that were revised for Medical Offices that took place and became effective during Ocean View's Escrow period for the purchase of property "B", Ocean View now has insufficient parking for the conversion from "Offices" to "Medical Offices". Soffer's property "A" has sufficient "legal" parking for Sid's Restaurant but insufficient parking from a practical standpoint. In the past, parcel "B" had sufficient required parking for its daytime hours of operation and the offices were closed at night and therefore did not use its parking except for the daytime hours. Soffer, on the other hand, had little need for additional daytime parking but had a great need for additional nighttime parking. Soffer's patrons, in most cases without owner's permission, used the empty parking spaces of parcel "B" and also the parking spaces across the

street as well as the available on street parking on Old Newport. To accommodate the additional parking requirements for Ocean View's conversion to "Medical Offices", Ocean View has proposed through this agreement to have the use for parking the additional required vehicles on the rear of Soffer's "A" lot during the daytime hours. In exchange, Ocean View offers the nighttime use of its unused parking for Soffer's use. In addition, Ocean View has offered and proposes through this agreement to pave, provide required lighting and maintain the now unused and undeveloped rear of property "A". Ocean View's proposal is for a period of forty-five (45) years. This will encumber Soffer's property beyond any reasonable foreseeable time, but it has been discussed between Ocean View and Sid Soffer that the best future use for Soffer's "A" property would be to combine it with one of the adjoining properties. The property to the North is completely developed with a new building and has all of the required parking, and although has offered to purchase Soffer's "A" parcel, because of the additional requirement for parking on Ocean View's parcel "B", Ocean View would be the logical purchaser. It is likely, and expected that Soffer would therefore receive more than market value from Ocean View. It is foreseen by Soffer that the additional money above fair market value that Ocean View would pay Soffer should be fair compensation for Soffer's inability to further develop his underdeveloped property during the forty-five-(45) year period that Ocean View proposes.

**WITNESSETH:**

WHEREAS, Ocean View is the owner of a fee simple estate in that certain parcel of real property located in the County of Orange and State of California more particularly described in Exhibit B attached hereto and incorporated herein (said parcel being hereinafter referred to as "Parcel B"); and

WHEREAS, Soffer is the owner of a fee simple estate in that certain parcel of real property located in the County of Orange and State of California more particularly described in Exhibit A attached hereto and incorporated herein (said parcels being hereinafter referred to as "Parcel A") which Parcel B is adjacent to Parcel A; and

WHEREAS, the parties hereto desire to enter into this Reciprocal Easement Agreement for the joint use of walking, parking, and driving areas in Parcel A and Parcel B, as more particularly shown on the site plan attached hereto as Exhibit C (the "Site Plan") and for the joint rights of access to, and ingress and egress and surface water drainage over and across such areas;

NOW THEREFORE, in consideration of the mutual benefits to be realized by such joint use, the mutual agreements set forth herein the parties hereto do hereby agree as follows:

1. Ocean View does hereby establish, give, grant, and convey to Soffer, his respective successors, successors-in-title, and assigns, and the tenants, customers, employees, and invitees of such parties, a non-exclusive easement appurtenant to Parcel A for passage and use for the purpose of ingress and egress to and from Parcel A over Parcel B, and for the purpose of walking upon and driving and parking vehicles upon and across all those sidewalks, entrances, drives, lanes, and parking areas in Parcel B which are now or may hereafter from time to time be used for pedestrian and vehicular traffic and parking as is not within the building area shown on the Site Plan which non-exclusive easement is limited



solely to the hours between 7:00 p.m. and 3:00 a.m. each day.

2. Soffer does hereby establish, give, grant, and convey to Ocean View, its successors, successors-in-title, and assigns and the tenants, customers, employees, and invitees of such parties, a non-exclusive easement appurtenant to Parcel B for passage and use for the purpose of ingress and egress to and from Parcel B over Parcel A for the purpose of walking upon and driving and parking for twenty-four (24) full-sized vehicles upon and across all those sidewalks, entrances, drives, lanes, repair the wall, and parking areas in Parcel A which are now or may hereafter from time to time be used for pedestrian and vehicular traffic and parking as is not within the building area, if any, shown on the Site Plan and is limited to the rear portion of Parcel A shown on the site plan.

3. In connection with the grant of the reciprocal easements contained herein, and in order to make such easements effective for the purposes contained, Ocean View and Soffer do further agree as follows:

(a) All buildings constructed on Parcel B shall be constructed entirely within the area shown on the Site Plan as "Building Area -Parcel B." At all times during the term of this Agreement except as long as there is sufficient parking as per City code and regulation without affecting the reciprocal parking number available to both parcels, Parcel B shall contain paved parking spaces for at least 35 full-sized automobiles and passenger trucks, subject to reduction in such number by virtue of condemnation or eminent domain. All driveways and entrance ways on Parcel B which are crosshatched on the Site Plan shall be constructed and maintained by the owner of Parcel B, subject to closings or takings by governmental authorities.

X (b) All buildings constructed on Parcel A shall be constructed entirely within the area shown on the Site Plan as "Building Area -Parcel A." At all times during the term of this Agreement except as long as there is sufficient parking as per City code and regulation and without affecting the reciprocal parking number available to both parcels, Parcel A shall contain paved parking for at least 24 full sized automobiles and passenger trucks, subject to reduction in such number by virtue of condemnation or eminent domain. All driveways and entranceways on Parcel A which are crosshatched on the Site Plan shall be constructed and maintained by the owner of Parcel A, subject to closings or takings by governmental authorities.

(c) No party hereto shall, at any time prior to the termination of the easements herein granted, erect or construct, or cause to be erected or constructed, any fence, wall, curb, or other barrier which would in any manner interfere with or restrict the full and complete use and enjoyment by any party of the easements herein granted provided, however, that either party may construct or maintain a fence, wall, curb or other barrier on the common boundary line between Parcel A and Parcel B so long as there remains other methods of ingress and egress to both Parcel A and Parcel B which will ensure the full and complete use and enjoyment of the easements herein granted.

(d) Ocean View does hereby agree to pave the rear portion of Parcel A for the purpose of creating additional parking stalls, to be used by Parcel B. To the extent the City requires additional lighting for the rear portion of Parcel A, Ocean View shall pay for the cost of additional lighting.

4. Each party hereby grants and conveys to the other party, its successors, successors-in-title, assigns, or tenants, at any time and from time to time during the term of this Agreement, the right, but not the obligation, to enter upon the other party's parcel or parcels for the purpose of constructing, installing, and maintaining the parking lot, driveways, sidewalks, and lighting as more particularly shown on the Site Plan.

5. The parking lot, sidewalks, driveways, and lighting located on Parcel A and Parcel B shall be maintained in good order and repair by the respective owners of such Parcels at all times during the term of this Agreement, including striping, snow, ice and trash removal, except for the rear portion of Parcel A, as shown on the Site Plan, to be maintained by the owner of Parcel B. The owner of each of such Parcels shall keep the parking lot located thereon lighted during the hours of business maintained by any tenant or business enterprise located on such Parcel or the other Party's Parcel.

6. The restrictions and agreements granted herein shall terminate upon the earlier to occur of (i) January 1, 2050; or (ii) expiration of twelve (12) months after the last day on which Parcel A is used for a commercial building (it being understood that construction of a medical office building shall constitute a commercial office building use) and the entry of a final order by a court of competent jurisdiction that such easements, restrictions, and agreements are no longer necessary for the protection of the respective property owners considering the uses then being made of the respective parcels.

7. The easements, restrictions, and agreements provided for herein shall be effective upon execution of this Reciprocal Easement Agreement by the parties hereto. The easements provided for herein shall run with the land and shall constitute a use for reciprocal benefits to and burdens upon Parcel A and Parcel B. The easements provided for herein shall inure to the benefit of and be binding upon the respective successors, successors-in-title, assigns, heirs, and tenants of each party hereto and the customers, employees, and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership of Parcel A or Parcel B, or any of them, or by any change of use, demolition, reconstruction, expansion, or other circumstances, except as specified herein. The agreement and undertakings by each party hereto shall be enforceable by action for specific performance, it being agreed by both parties hereto that an action for damages would not be an adequate remedy for a breach of this Reciprocal Easement Agreement.

8. This instrument is not intended to, and should not be construed to dedicate the said easement areas to the general public, nor shall this instrument be construed to restrict the use and development of Parcel A or Parcel B, except as stated herein. Without limiting the generality of the foregoing and subject to the limitations contained herein, Ocean View and Soffer shall have the right to expand, alter, modify, or demolish all or part of the buildings

they propose to construct on Parcel A or Parcel B or develop said parcels in any manner they see fit, it being the intent of this instrument to grant reciprocal easements over parking, drives, sidewalks, and common areas as they exist from time to time without limiting the right of Ocean View or Soffer to alter, demolish, or redevelop said areas.

9. Soffer shall not sell or agree to sell Parcel A without first offering Parcel A to Ocean View. The word "sell" shall include any transfer, conveyance, assignment of all or any portion of Parcel A. Before Soffer sells or agrees to sell Parcel A, Soffer shall offer (the "First Offer") to sell Parcel A to Ocean View, in writing and on the terms and conditions substantially identical to those proposed for the sale of the Property to a third party. The First Offer shall include all the material terms and conditions contained in that which is being offered in the proposed sale to the third party including, but not limited to, the proposed purchase price (the "Proposed Price"), down payment, timing, and the name of proposed purchaser. Ocean View shall have 60 days from the date of the First Offer ("the Acceptance Period") to accept the First Offer by delivering to Soffer the acceptance on or before 5:00 p.m. on the last day of the Acceptance Period which acceptance shall be at the lesser of the Proposed Price or 115% of the Appraised Price (as hereinafter defined). If Ocean View rejects the First Offer and Soffer enters into negotiations with a third party and is otherwise willing to enter into an agreement with that party on terms substantially less favorable to Soffer than those contained in the First Offer, then Soffer shall offer to sell Parcel A to Ocean View on those new terms by giving Grantee written notice (the "Second Offer") and Ocean View shall once again have the right to accept or reject as described above. In order to determine the "Appraised Price", within ten (10) days of the making of the First Offer (and the Second Offer, if applicable) Soffer and Ocean View shall each appoint a licensed appraiser with not less than seven (7) years of experience appraising similar properties in the southern California area. The two appointed appraisers shall, within (10) days thereof together choose a third independent appraiser with similar qualifications. Such third appraiser shall, within 20 days of his/her appointment, determine the fair market value of Parcel A and such value shall be the "Appraised Price". Soffer shall also have the right to "put" Parcel A to Ocean View at any time by written demand (the "Put Letter") to Ocean View to purchase Parcel A at a purchase price chosen by Soffer (the "Put Price"). Ocean View then would elect to determine the Appraised Price as described above. Ocean View shall have 60 days from the date of the Put Letter ("the Acceptance Period") to determine the Appraisal Price by delivering to Soffer the acceptance on or before 5:00 p.m. on the last day of the Acceptance Period, which acceptance shall be at the lesser of the Put Price or 115% of the Appraised Price.

10. In the event during the duration of this Reciprocal Easement Agreement, the City of Newport Beach revises the parking requirement of 5:1,000 for medical parking to 4:1,000 for medical parking; after confirmation of the City of Newport Beach Parking Requirement as referenced above, Ocean View would submit, in writing, to Soffer notifying Soffer of the change; which at that time, at the option of either party, this Reciprocal Eastment Agreement can be cancelled.

11. Upon the written request of the owner of any of the Parcels, the then owner of any Parcel, or any portion thereof, shall execute and deliver, within ten (10) days after receipt of

such request, a certificate certifying that there are no known defaults on the part of any party to this Agreement or, if there are such defaults, specifying the particulars of such defaults and the action required to remedy it and certifying that there are no setoffs or defenses to the enforcement of the terms of this Agreement, or if there are, specifying the particulars of such setoffs or defenses.

11. This Agreement shall be recorded in the public records of Orange County, California and shall be prior in title to any deed of trust which is now or may hereafter be placed upon any of Parcel A and Parcel B.

12. The recitals and explanation of the intent in this Agreement are intended solely for reference and do not modify, explain or construe any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Reciprocal Easement Agreement as of the date first above written.

"OCEAN VIEW"

Ocean View Medical Investors LLC,  
a California limited liability company

By: 

Name: John Bral

Its: Managing Member

"SOFFER"

  
Sidney Soffer

# **EXHIBIT "A"** **PARCEL A**

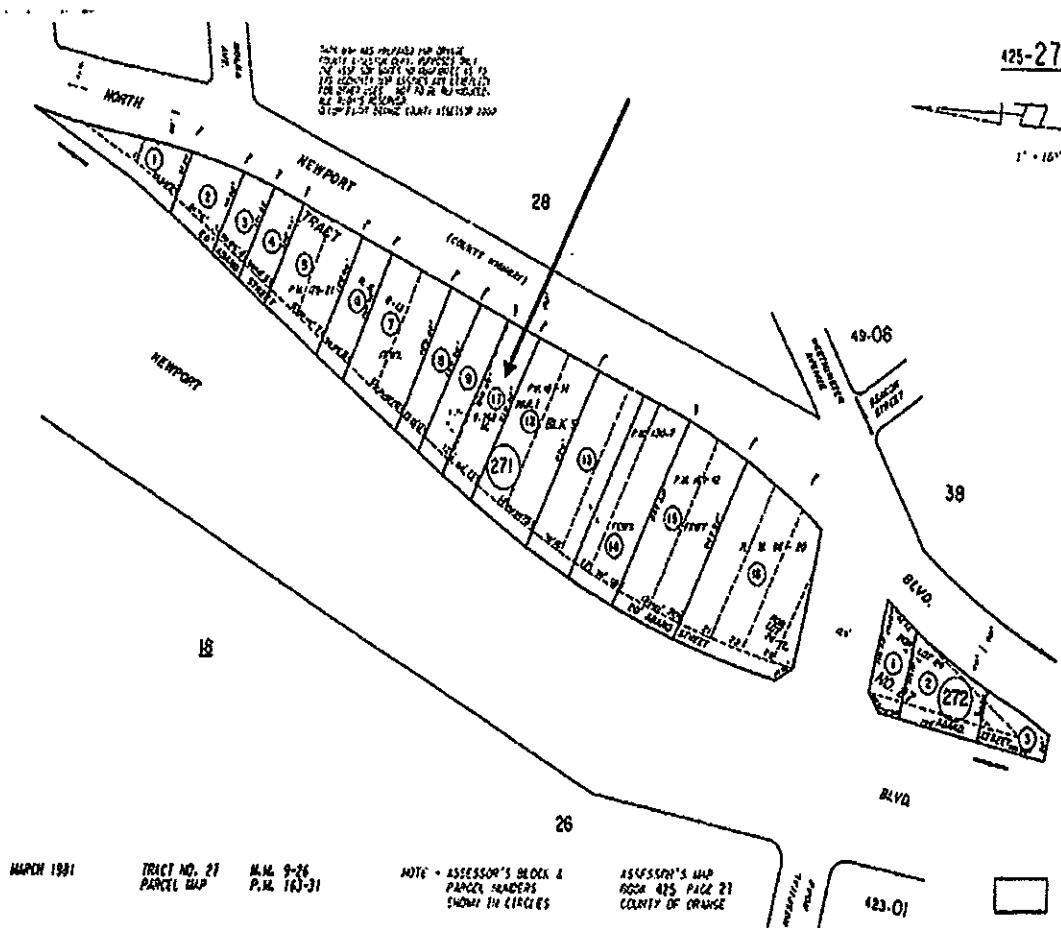
The real property located in the County of Orange, California, commonly known as 445 Newport Boulevard, Newport Beach, described as follows:

## **PARCEL 1:**

Lot 13 and the Southwesterly 3.27 feet of Lot 12 in Block 9 of "Tract No. 27, Boulevard Addition to Newport Heights" in the City of Newport Beach, as shown on a map recorded in book 9 , page 26 of Miscellaneous Maps, Records of Orange County, California.

## **PARCEL 2:**

That portion of the Southeasterly half of the 40-foot road adjoining said Lots 12 and 13 on the Northwest, as abandoned by the order of the Board of Supervisors of Orange County on June 25, 1949, bounded Northwesterly by the Northwesterly prolongation of the Northeasterly line of the Southwesterly 3.27 feet of said Lot 12 and bounded Southwesterly by the Northwesterly prolongation of the Southwesterly line of said Lot 13.



### PARCEL "B"

**All of that certain real property situated in the City of Newport Beach, County of Orange, State of California, described as follows:**

Parcel 1 of Parcel Map No. 80-719, in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 163, Pages 31 and 32 of Parcel Maps, in the Office of the County Recorder of said County.

APN 425-271-12

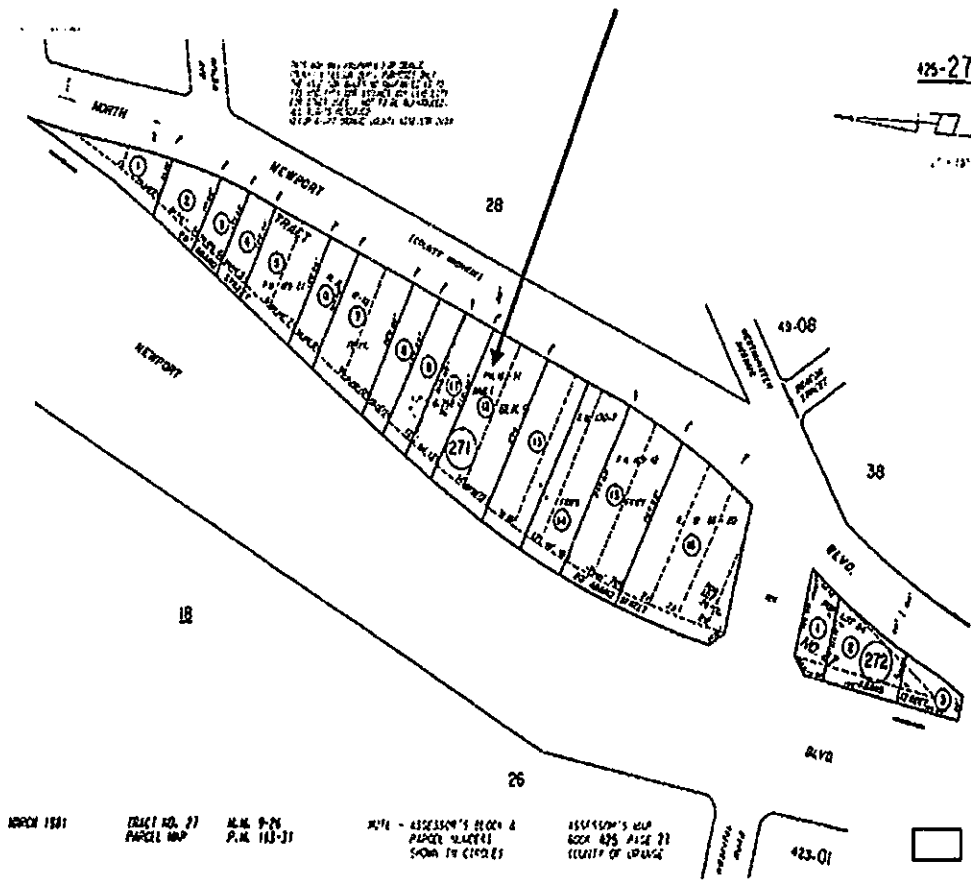
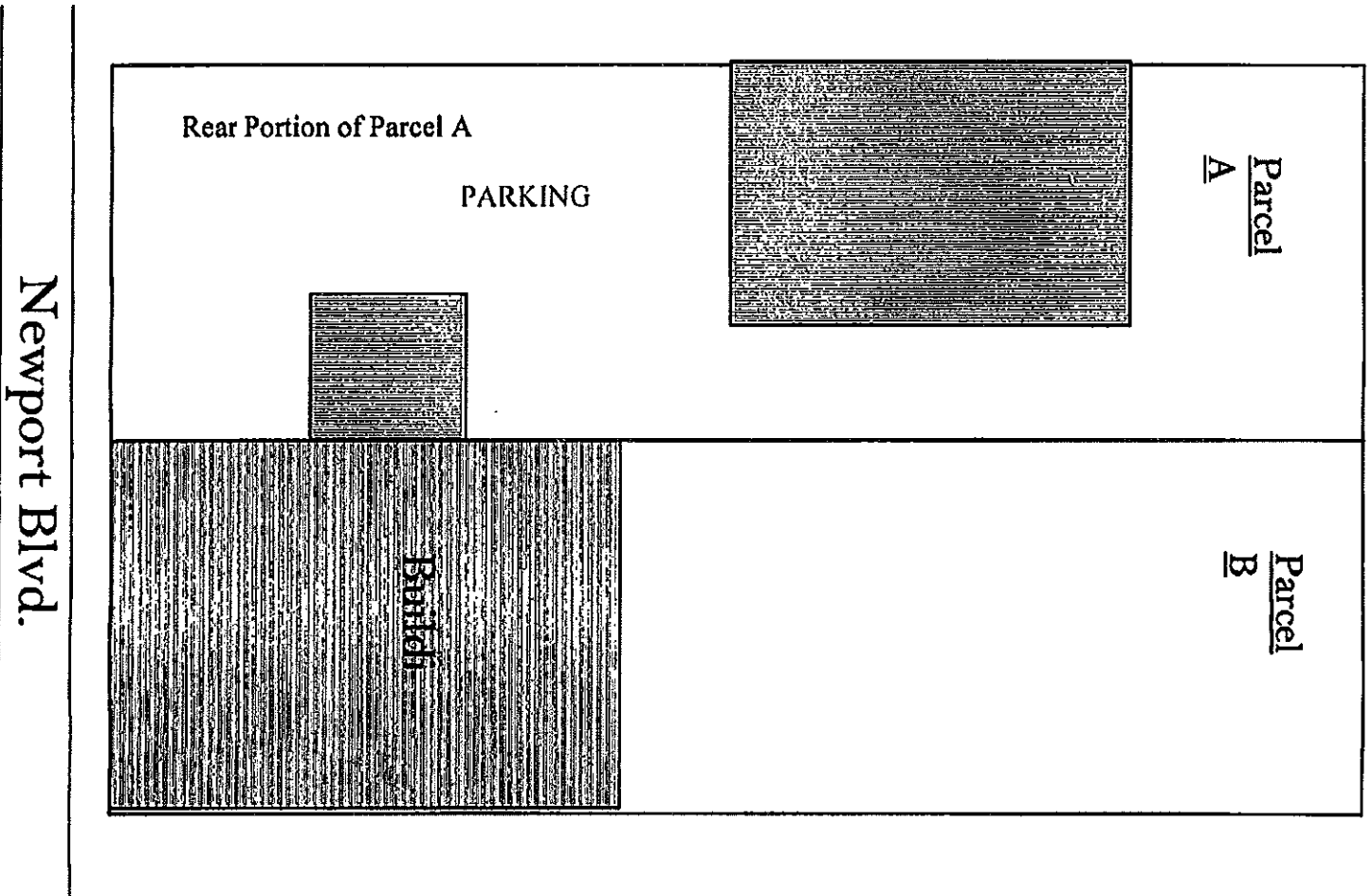


EXHIBIT "C"

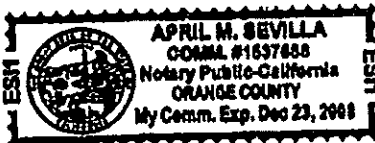
Site Plan



STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On October 14th, 2005, before me, April M. Sevilla, a Notary Public in and for the State of California, personally appeared John S. Breal, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(s), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



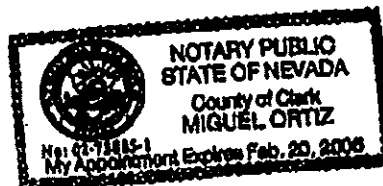
Notary Public

NEVADA  
STATE OF ~~CALIFORNIA~~ )  
 ) ss.  
CLARK  
COUNTY OF ~~LOS ANGELES~~ )

On October 25, 2005, before me, Miguel Ortiz, a Notary Public in and for the State of ~~California~~ Nevada, personally appeared Sidney Lester Suffer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(s), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Miguel Ortiz  
Notary Public





## **Attachment No. PC 4**

Draft Resolution for Denial



## **RESOLUTION NO. 2013-**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH DENYING CONDITIONAL USE PERMIT NO. 2011-011 TO UTILIZE AN OFF-SITE PARKING LOT AT 445 OLD NEWPORT BOULEVARD FOR AN EXISTING COMMERCIAL OFFICE BUILDING LOCATED AT 441 OLD NEWPORT BOULEVARD (PA2011-056)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### **SECTION 1. STATEMENT OF FACTS.**

1. An application was filed by John Bral, with respect to property located at 441 Old Newport Boulevard, and legally described as Parcel 1 of Parcel Map No. 80-719, in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 163, Pages 31 and 32 of Parcel Maps in the office of the Orange County Recorder requesting approval of a conditional use permit.
2. The applicant proposed a conditional use permit to reduce the required off-street parking and to utilize an off-site parking lot. The project proposes to utilize the recently renovated commercial office building (11,540 square feet) for medical office and to provide 51 of the 56 required parking spaces (a reduction of five required spaces). Forty-four spaces would be on-site and seven spaces would be provided on the abutting property to the north at 445 Old Newport Boulevard which is developed with a vacant restaurant.
3. A public hearing was held on September 6, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.
4. At the September 6, 2012, meeting the Planning Commission denied the application request pursuant to Resolution No. 1892.
5. On September 19, 2012, the applicant appealed the Planning Commission's decision to deny the entitlement request to allow a reduction in the required off-street parking and to utilize an off-site parking lot for a recently renovated commercial building that proposes a medical use. Subsequent to the Planning Commission's action on the project, the applicant has modified the project by securing the off-street parking with the ability to renovate an off-site lot for parking purposes through a private agreement and providing the minimum required parking spaces for the proposed medical use. Therefore, the entitlement request has changed to a use permit for off-site parking rather than a use permit for a parking waiver and for off-site parking.
6. A public hearing was held on March 26, 2013, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of

the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the City Council at this meeting.

7. At the March 26, 2013, hearing, the City Council took staff's recommendation and directed the Planning Commission to review and take action on the application which has been revised to provide the minimum required parking spaces for the proposed medical use of the commercial building through off-site parking, pursuant to Zoning Code Section 20.40.100.
8. A public hearing was held on April 3, 2013, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.
9. The subject property is located within the Office General (OG) Zoning District and the General Plan Land Use Element category is General Commercial Office (CO-G).
10. The subject property is not located within the coastal zone.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). The medical use would occupy an existing general office building and utilize existing parking lots with a negligible expansion of use.

## SECTION 3. REQUIRED FINDINGS.

## SECTION 4. DECISION.

### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby denies Conditional Use Permit Application No. UP2011-011.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 3<sup>rd</sup> DAY OF April, 2013.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Michael Toerge, Chairman

BY: \_\_\_\_\_  
Fred Ameri, Secretary



# **Attachment No. PC 5**

Project Plans







April 1, 2013

To the members of the Planning Commission:

This is in reference to the planned change in parking requirements for the office building at 441 Old Newport Blvd. This building is approximately 11,500 ft.<sup>2</sup>, but there are only 44 onsite parking spaces. This does not meet the city's criteria for even a commercial office building, let alone a medical office building. In order to come close to the requirements to park it as a medical building, they are going to be parking in a lot next-door. This is currently an abandoned restaurant.

We are the owners of medical office buildings on either side of this proposed medical office building (at 415 and 455 Old Newport Blvd.) and we can attest to the fact that there is a severe parking problem here. Many of the neighboring businesses do not have adequate parking and there are only 7 total public parking spaces on the street. As result, we are constantly "shooing" people out of our parking lots when they are unable to find parking in nearby office buildings and restaurants.

We have several problems with this current proposal: No one will ever park in that abandoned building lot owned by the Soffers; it is unpaved, unkempt, and it currently looks like a "haunted house". After the patrons circle the inadequate 441 lot and cannot find a parking space, they will simply look for a well tended, paved lot to park in- which would be one of our lots. As you stated before, the 441 parking arrangement is not "permanent nor marked". How would that qualify as a solution to the 441 parking problems?

We also have grave concerns that some day (hopefully sooner than later) the abandoned restaurant will be either torn down to make way for an office building or will be reopened as a restaurant. Unfortunately for everyone, the patrons of that new office building or restaurant will claim those parking spots and that parking will no longer be available to the 441 patrons. Then what? Will the Planning Commission force medical renters to leave the building? Someone stated that a future restaurant at the Soffer site would be "only open at night". First of all, we have no assurance that that is the case. Secondly, even if it was opened only at night, restaurant staff would have to be there early in the day to prep for service and restaurants that are open "only the evening", usually open before 5 PM when you would expect medical office traffic to still be using the parking. We don't see any change to the problems that led to the Planning Commission turning this project down the first time. The agreement seems unchanged, except for the fact that the old agreement was signed by Sid Soffer who passed away years ago and the new agreement is signed by his widow. The property is still in bankruptcy, no paving or other improvements have been made and nothing is guaranteed to be done.

We had to "follow the rules" in building our office buildings, and as a matter of fact were limited to partial medical/partial commercial at the 445 building due to required code parking restrictions; as were the others who did construction in the area. We request that this office building at 441 be required to provide the adequate permanent parking required by code for all buildings. And that they not be allowed to break the rules and impose hardship on the rest of the buildings in our area.

Additional Materials

Item No. 3b

441 Old Newport Medical Office Building

PA2011-056

For Agenda Item Nos. 3 and 4 the following language was added to "Section 1 Statement of Facts" in the Draft Resolutions:

At the April 3, 2013, hearing, the Planning Commission continued this item to the April 18, 2013, hearing.

A public hearing was held on April 18, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

Correspondence

Item No. 3c

**Whelan, Melinda**

441 Old Newport Medical Office Building

PA2011-056

**From:** 0400000015@comcast.net  
**Sent:** Thursday, April 18, 2013 12:35 PM  
**To:** Whelan, Melinda  
**Subject:** 1/4

Malinda thank you for your time & help. I can't attend the hearing tonite. I wish the best result for John Bral. One thing I ha

**Whelan, Melinda**

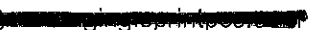
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**From:** 0408802315@ messaging.sprintpcs.com  
**Sent:** Thursday, April 18, 2013 12:35 PM  
**To:** Whelan, Melinda  
**Subject:** 2/4

ve to mention, the parking agreement I signed with John is not valid since I'm still under bankruptcy court. My attorney confir

Whelan, Melinda

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From: ~~0400000045~~   
Sent: Thursday, April 18, 2013 12:35 PM  
To: Whelan, Melinda  
Subject: 3/4

med I 'm not authorised to sign any legal matter documents about 445 old newport. I hope it won't affect John's agenda but I ha

Whelan, Melinda

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From: ~~0400202215@messaging.sprintpcs.com~~  
Sent: Thursday, April 18, 2013 12:35 PM  
To: Whelan, Melinda  
Subject: 4/4

ve to follow bankruptcy rule. It should settle in 2~3 month. Michiko

# Old Newport Medical Office Building

441 Old Newport Boulevard  
Use Permit No. 2011-011



Staff Presentation

Item No. 3d

Old Newport Medical Office Building

PA2011-056

Planning Commission  
Public hearing  
April 18, 2013





# Introduction



- Utilize off-site parking lot
  - Existing 23,080 sq. ft. lot developed with a 11,540 sq. ft. commercial office building currently being renovated
  - Medical office proposed to occupy building requires 56 parking spaces, 43 on-site and 13 on the abutting property at 445 Old Newport Blvd

# Vicinity Map

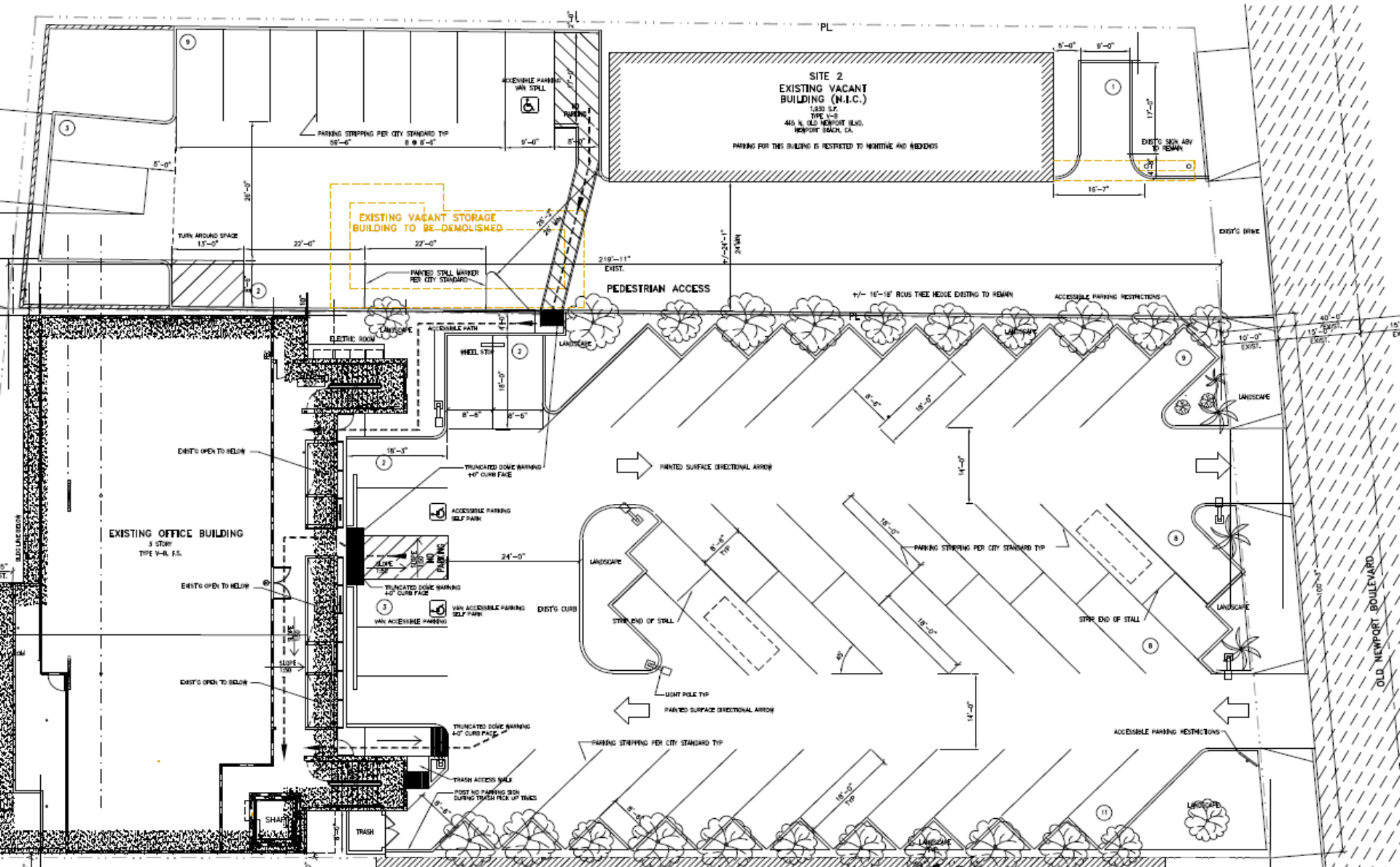


# Project Details



- Access and Circulation of on-site and off-site parking reviewed and approved by City Traffic Engineer
- Improvements of off-site lot include grading, paving and the demolition of a storage shed
- Pedestrian and disabled accessibility path of travel between properties is provided

# Site Plan





# Project Facts



- Ensures adequate on and off-site circulation
- Agreement is binding upon change of ownership
- Changes to use or access of off-site lot requires additional review with spaces provided elsewhere or use must be reduced

# CEQA Review



- Categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines, Class 1 (Existing Facilities)

# Recommendation



- Conduct a public hearing
- Adopt draft Resolution Approving Conditional Use Permit No. UP2011-011 subject to the findings and conditions.



For more information contact:

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949-644-3221  
[mwhelan@newportbeachca.gov](mailto:mwhelan@newportbeachca.gov)  
[www.newportbeachca.gov](http://www.newportbeachca.gov)